

**REMARKS/ARGUMENTS**

**I. Status of the Claims**

Claims 1-10, 13-26, and 29-47 are pending. Claims 30, 31, and 33-45 have been allowed. Claims 13 and 15 are objected to as depending from a rejected claim. Claims 1-10, 14, 16-26 and 32 are rejected. Claims 11, 12, 27 and 28 have been canceled herein and claims 46 and 47 added.

**II. The Amendments Herein**

The amendments herein add no new matter.

The amendments to the specification add trademark and registration symbols where required.

The amendments to claims 1, 17, and 18 add a recitation that the WPI or SPI is not denatured. The recitation is supported throughout the specification, including original claims 11 and 28.

The amendment to claim 29 recite that the coating comprises a combination of denatured or non-denatured WPI or SPI, or both. This is supported throughout the specification, including page 3, lines 16-18 and page 4, lines 1-2.

The amendments to claim 32 replace trademarked terms with generic terms covering the trademarked or registered products previously recited. Support for the terms "ethoxylates" and "sorbitan esters" is found at, for example, page 8, line 22.

New claim 46 recites that the coating can comprise (a) denatured WPI and non-denatured SPI, or (b) non-denatured WPI and denatured SPI or (c) a combination of (a) and (b), and is supported throughout the specification, including page 3, lines 16-18 and page 4, lines 1-2.

New claim 47 recites with regard to the method of claim 30 that the contacting of step (a) and the mild abrasion of step (b) occur concurrently. This is supported throughout the specification, including page 9, lines 1-6.

### **III. Rejection of Claims 1-10, 12, 14, 16-27, and 32 as Obvious**

The Action rejects claims 1-10, 12, 14, 16-27, and 32 under 35 U.S.C. § 103(a) as obvious over Krochta, U.S. Patent 5,543,164 (the "Krochta '164 patent"), in view of Trezza, J. Food Sci 65(4):658 (2000) and further in view of Glass, U.S. Patent 5,102,680 ("Glass"). According to the Action, the Krochta '164 patent discloses a protein-based edible barrier that is made from whey protein isolate ("WPI") or soy protein isolate ("SPI") and contemplates use of a plasticizer such as sorbitol at 1 to 15%. Lipid is also used. Trezza is relied on to show that edible coatings with WPI are known to have a gloss. Glass is relied on for teaching that sweetening agents such as sucrose and corn syrup as known to act as plasticizers. The Action asserts that it would have been obvious to use sucrose as a plasticizer in the Krochta '164 patent to provide an enhanced sweetness without the use of extra ingredients. Applicants amend in part and traverse in part.

The films disclosed by the Krochta '164 patent recite the use of proteins treated, before or after application to a foodstuff, to induce the formation of disulfide bonds. The Krochta '164 patent therefore teaches only the use of denatured proteins. As amended, claim 1 recites a gloss coating that comprises WPI or SPI which is not denatured. Similarly, as amended, claim 17 recites a method of providing an edible gloss coating that comprises WPI or SPI that is not denatured. Since the Krochta '164 patent does not disclose coatings comprising undenatured proteins, it does not render obvious the claims as amended. The Action essentially draws the same conclusion, for it does not find obvious claim 11, which is drawn to a gloss coating in which the WPI or SPI is not denatured, or claim 28, wherein the WPI is not denatured. Accordingly, Applicants respectfully maintain that the claims as amended are free of the obviousness rejection. Reconsideration and withdrawal of the rejection are respectfully requested.

### **IV. Rejection of Claim 32 as Indefinite**

The Action rejects claim 32 as indefinite under 35 U.S.C. § 112, first paragraph, for the use of the trademarked term "Span™." This term, and the term "Tween," have been replaced by generic language. Applicants submit that the claim, as amended, is free of the

Appl. No. 09/879,796  
Amdt. dated September 26, 2003  
Reply to Office Action of March 26, 2003

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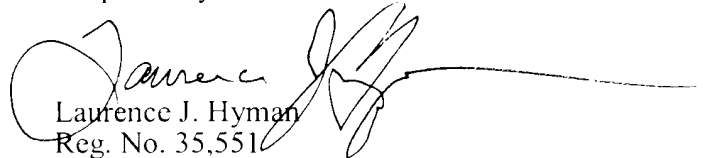
rejection. Applicants note that the amendment of this claim is not made with respect to any question of prior art and that they therefore believe themselves to be entitled to all equivalents of the invention as claimed.

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,

  
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